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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

7 SETH CANFIELD,

8 Plaintiff,

9 v.

10 MICHAEL J. ASTRUE, Commissioner of
11 Social Security Administration,

12 Defendant.

CASE NO. C07-5608JKA

ORDER REMANDING
ADMINISTRATIVE DECISION

13
14 Plaintiff brings the instant action pursuant to 205(g) of the Social Security Act ("the Act"), as
15 amended, 42 U.S.C. § 405(g), to obtain judicial review of the administration's final decision denying
16 plaintiff's application for social security benefits. This matter has been referred and reassigned to the
17 undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter has been fully briefed and oral
18 argument was presented on September 9, 2008. After reviewing the record, the Court remands the matter
19 to the Social Security Administration for further consideration.

20 Plaintiff argues for remand on the following basis: (i) the administrative law judge's decision that
21 Plaintiff was not disabled after April 7, 2004, is not supported by substantial evidence, and (ii) the
22 administrative law judge failed to include all relevant limitations in the hypothetical questions asked of
23 the vocational expert. More specifically, Plaintiff argues the ALJ failed to properly consider certain
24 medical evidence. Plaintiff specifically argues the ALJ improperly relied on vocational expert testimony
25 from a prior hearing and failed to allow the vocational expert at the second hearing testify, which would
26 have included information and evidence that was not in the record at the time of the first hearing. Finally,
27 Plaintiff contends the ALJ did not consider lay witness evidence in context of the relevant time period.

28 The Court must uphold the administrations's determination that plaintiff is not disabled if the ALJ

1 applied the proper legal standard and there is substantial evidence in the record as a whole to support the
2 decision. Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986). Substantial evidence is such
3 relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v.
4 Perales, 402 U.S. 389, 401 (1971); Fife v. Heckler, 767 F.2d 1427, 1429 (9th Cir. 1985). It is more than a
5 scintilla but less than a preponderance. Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir.
6 1975); Carr v. Sullivan, 772 F. Supp. 522, 525 (E.D. Wash. 1991). If the evidence admits of more than
7 one rational interpretation, the Court must uphold the administrative decision. Allen v. Heckler, 749 F.2d
8 577, 579 (9th Cir. 1984).

9 After considering the oral argument and carefully reviewing the parties briefs and the
10 administrative record, the court finds and orders as follows.

11 1. The ALJ has a special duty to fully and fairly develop the record and to assure that the
12 claimant's interests are considered. Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983). A vocational
13 expert must testify at a hearing on the issue of whether the claimant is able to perform substantial gainful
14 activity. Perminter v. Heckler, 765 F.2d 870 (9th Cir. 1985). The vocational expert is asked hypothetical
15 questions and those questions should include all of the claimant's limitations. Russell v. Sullivan, 930
16 F.2d 1443, 1445 (9th Cir.1991); Gallant v. Heckler, 753 F.2d 1450 (9th Cir. 1984). If the hypothetical
17 questions fail to include all the relevant limitations, it cannot be considered substantial evidence. Cooper
18 v. Sullivan, 880 F.2d 1152, 1158 n. 13 (9th Cir.1989) (holding vocational expert's testimony must
19 "accurately reflect all of the claimant's limitations, including pain" or it has no evidentiary value).

20 At the first administrative hearing the ALJ asked a vocational expert, William W. Weiss,
21 questions which led to the conclusion that Plaintiff was able to perform certain sedentary jobs. The
22 conclusion was not valid because the Appeals Council found the ALJ's failed to properly obtain evidence
23 from a mental health expert and give further consideration to Plaintiff's residual functional capacity in
24 light of his apparent mental health limitations. Accordingly, a subsequent review and second hearing
25 took place, at which the ALJ took additional testimony, including testimony from Dr. Lewy, a
26 psychologist. A vocational expert, Leta Berkshire, attended the second hearing, but did not testify. The
27 ALJ did not ask her any hypothetical questions, which would presumably have included the mental health
28 evidence from Dr. Lewy and any other evidence related to Plaintiff's residual functional capacity. The

1 ALJ concluded Plaintiff was not disabled as of April 2004, and in doing so he relied again on the previous
2 testimony of Mr. Weiss.

3 Significantly, Dr. Lewy testified Plaintiff has had “severe, persistent memory problems since –
4 supposedly since the accident in 2002.” Dr. Lewy opined Plaintiff suffered from moderate limitations in
5 daily living, social functioning and maintaining concentration, persistence in pace without episodes of
6 decompensation. Dr. Lewy stated Plaintiff would be able to do simple and repetitive work, including two
7 to three step tasks of moderate pace. Although Dr. Lewy’s opinion appears to be consistent with the
8 hypothetical posed to Mr. Weiss at the first administrative hearing, Mr. Weiss was not able to incorporate
9 Dr. Lewy’s full testimony into formulating an answer. To fully and fairly develop the record, the ALJ
10 should have asked the same or similar hypothetical to the vocational expert (Ms. Berkshire) present at the
11 second hearing.

12 2. In determining whether a claimant is disabled, an ALJ must consider lay witness testimony
13 concerning a claimant’s ability to work. Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1053 (9th
14 Cir. 2006); 20 C.F.R. §§ 404.1513(d)(4) & (e), 416.913(d)(4) & (e). If an ALJ rejects lay witness
15 statements, he must give reasons germane to each witness for rejecting the evidence. 20 C.F.R. §§
16 404.1513(d)(4), 416.913(d)(4) & (e); Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001).

17 Mr. Canfield’s mother, Sandra Canfield, submitted a functional report, dated April 24, 2006,
18 outlining her observations of her son following the first automobile accident (Tr. 241 - 49). The ALJ
19 stated, “I have considered the function report completed by Sandra Canfield and have assigned it weight
20 appropriate to its probative value.” (Tr. 28). The ALJ discounted her statement because it was submitted
21 a few months after Mr. Canfield returned to work, Mr. Canfield’s mood improved after he returned to
22 work, and her statement that her son could pay attention for only 10 minutes was inconsistent with her
23 son’s return to work (Tr. 28). The ALJ erred in not explaining and/or considering the relevant time
24 period. The ALJ’s comments indicated he focused only on the period after Plaintiff returned to work in
25 January 2006 and not the period from the first accident three and a half years earlier on November 27,
26 2002. Mrs. Canfield’s statements relate to the physical and mental limitations caused by the injuries
27 sustained in the automobile accident of November 2002. She also describes that Plaintiff was depressed
28 and slept a lot, which is consistent with Plaintiff’s reported activity level before he returned to work for

1 his brother. She also describes a decline in memory such that she has to call her son or put post it notes
2 up to remind her son of appointments or medications, which is consistent with Dr. Lewy's opinion (Tr.
3 243). The ALJ improperly dismissed the lay witness statements, saying that it is inconsistent with work
4 activities without considering whether these limitations impacted Mr. Canfield between April 7, 2004 and
5 December 31, 2005, the relevant time period in this case.

6 Based on the above errors, the Court REMANDS the matter to the Social Security Administration
7 for further consideration. On remand the matter should be assigned to a new administrative law judge,
8 who should reconsider each of the five-steps of the administrative process.

9 DATED this 13th day of November, 2008.

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11 /s/ J. Kelley Arnold
12 J. Kelley Arnold
13 U.S. Magistrate Judge
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